



City of Santa Clara

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Agenda Report

18-441

Agenda Date: 7/17/2018

REPORT TO STADIUM AUTHORITY BOARD

SUBJECT

Action on Agreement related to College Football Playoff 2019 National Championship at Levi's Stadium (Stadium Authority)

BACKGROUND

As announced in November 2015, Levi's Stadium will host the College Football Playoff (CFP) National Championship on January 7, 2019. CFP events in both Santa Clara and San Jose will begin January 4, culminating with the game at Levi's Stadium.

The Forty Niners Football Company LLC (Forty Niners) incorporated the Bay Area Host Committee (BAHC) in January 2018 to take on the rights and obligations of this event. As a California nonprofit mutual benefit corporation (501(c) (6), the BAHC cannot operate with a deficit. The Forty Niners have agreed to be the Third Party Guarantor to backstop any shortfall associated with the event including pre- and post-event expenditures.

On April 24, 2108, during an informational Study Session on the National Championship and related CFP events, supporting public services, and expected financial losses, staff outlined proposed agreement terms (Attachment 1) that isolate the event's financial losses from current Agreements between the Santa Clara Stadium Authority (SCSA) and Forty Niners Stadium Management Company (ManCo). The SCSA Board directed staff to return for formal approval of the terms in order to isolate the expenses incurred along with CFP hosting duties. The Board also directed staff to return with options so that neither the City's General Fund nor the SCSA budget pre-funds any CFP-related expenses.

On May 8, staff presented to the SCSA Board (i) proposed terms for the assignment and venue agreements and (ii) a recommendation to enter into a four party agreement to allow contracted public service providers to directly invoice the Bay Area Host Committee for all CFP related expenses (Attachment 2). The Board unanimously approved both staff recommendations.

DISCUSSION

SCSA staff and ManCo staff have negotiated terms for the Assignment and Assumption Agreement (Attachment 3) that meet the mutual goal to ensure no financial losses to SCSA. With the recommended agreement, BAHC will:

1. Pay for all CFP-related expenses for all actual public services/workforce costs (including Non-Game Day, and all pre-, during- and after-event costs), and up to double-time pay for public safety costs on event day if there are not sufficient staff supporting public safety activities signed up 60 days prior to game day.
2. Share any net revenues with SCSA, if applicable.

3. Provide (i) a complete accounting of all revenue and expenses, and possession of both soft- and hard- copy supporting documentation, for the CFP event and (ii) BAHC's annual financial audits for the fiscal years that contain Stadium Authority related expenses to the SCSA Executive Director.

As referenced in the June 26, 2018 Note and File Report to the Stadium Authority Board (Attachment 4), additional discussion was needed to further understand the Shared Stadium Expenses within the context of this event and the Assignment and Assumption Agreement. SCSA Executive Director and ManCo staff have discussed and exchanged information and this matter is satisfactorily closed based on ManCo's appropriate response and the audit provision. SCSA staff is in agreement with ManCo's statement that they will not allocate Stadium Manager base expenses because those are incurred regardless of what events are held at the Stadium and sufficient clarification has been surfaced to advance the interest and direction of the SCSA Board. While this posed a slight delay, it was a productive conversation of cost allocation that resulted in greater knowledge of shared expenses and facilitated a solution.

As discussed in the May 8, 2018 Report to the SCSA Board, SCSA is not able to prevent pre-funding of CFP-related expenses by the City General Fund for City personnel costs. These expenses must first be incurred in the City's General Fund to allow for proper accounting of employee benefits. Should the SCSA Board approve the proposed Assignment and Assumption Agreement, SCSA will begin invoicing BAHC for expenses incurred on an ongoing basis, reducing the impact on the City's General Fund as much as possible. SCSA staff and ManCo staff have already begun the process of discussing the procedures and schedule to implement these directives.

For contracted public safety services, SCSA staff initially recommended a four party agreement between the City, SCSA, Forty Niners and BAHC under which the contracted agencies, such as California Highway Patrol (CHP) or Santa Clara County Sheriff's Office (Sheriff), would directly invoice the BAHC for all CFP-related expenses. However, given the tight timeline and in reviewing existing agreements for these services, SCSA staff determined that the Stadium Authority has the ability to directly invoice BAHC without first processing payments through the City's General Fund or SCSA budget and can, therefore, satisfy the Board's direction while not requiring a separate agreement(s). To achieve the Board's direction within the existing agreements terms, the recommended Assignment and Assumption Agreement includes a 15-day payment term upon receipt of a valid invoice. Agreements with both CHP and the Sheriff state that payments are due within 30 days upon receipt of a valid invoice. Upon receipt of a valid invoice for CFP-related expenses from either agency, City/SCSA staff will immediately bill BAHC, receive payment within 15 days, and remit payment to the respective agency in sufficient time to comply with existing agreements and not obligate the General Fund. This approach achieves the direction of the SCSA Board.

Therefore, SCSA will be able to meet the direction from the Board to not pre-fund any CFP related expenses for contracted services. Further, this allows the City to maintain both public safety and full financial oversight over the contracted public services. With this approach, the City's General Fund will not be the source of direct payment for third-party expenditures, nor will it temporarily front funds for future reimbursement.

SCSA staff also provided input to modify the terms in the Levi's Stadium Venue Use Agreement between ManCo and BAHC, referenced in the Assignment and Assumption Agreement, to be consistent with the SCSA Board recommendations.

FISCAL IMPACT

Based on the mutually agreed to terms, there shall be no loss to SCSA or the City for this event and SCSA shall share net income, if available, as determined by SCSA's Executive Director's review of all relevant documents. This includes costs incurred by City staff carrying out the duties of the SCSA and qualifying shared-expenses (split between ManCo and SCSA) in the SCSA Board approved budget for FY 2018/19. SCSA and ManCo Stadium Manager are developing a financial process to ensure this direction.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

COORDINATION

This report has been coordinated with the Finance Department and City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

ALTERNATIVES

1. Approve the Assignment and Assumption Agreement for the CFP 2019 National Championship Game Agreement.
2. Any other action by the Stadium Authority Board.

RECOMMENDATION

Alternative 1:

1. Approve the Assignment and Assumption Agreement for the CFP 2019 National Championship Game Agreement.

Reviewed by: Walter C. Rossmann, Chief Operating Officer

Approved by: Deanna J. Santana, Executive Director

ATTACHMENTS

1. April 24, 2018 SCSA Study Session
2. May 8, 2018 Report to the SCSA Board
3. Assignment and Assumption Agreement
4. June 26, 2018 Note and File Report to the SCSA Board

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is entered into and effective as of July 17, 2018 (the "Effective Date"), by and between Bay Area Host Committee, a California nonprofit mutual benefit corporation (the "Assignee"), and Forty Niners Stadium Management Company, LLC (the "Assignor"), a Delaware limited liability company, subject to the approval of the Santa Clara Stadium Authority ("Stadium Authority"), a California joint powers authority.

Background

- A. WHEREAS, effective as of October 23, 2015, Assignor entered into that certain CFP National Championship Game Agreement by and among the American Athletic Conference, Atlantic Coast Conference, The Big Ten Conference, Inc., The Big 12 Conference, Inc., Conference USA, Mid-American Conference, Mountain West Conference, Pac-12 Conference, Southeastern Conference, Sun Belt Conference, University of Notre Dame du Lac and certain related parties (together "CFP") and the Assignor (together with the Appendix, attachments, and Exhibits incorporated by reference therein, the "CFP National Championship Game Agreement"); and
- B. WHEREAS, the Assignee was formed in January of 2018 to attract cultural and sporting events to the San Francisco Bay Area for the benefit of the region; and
- C. WHEREAS, the purpose of the CFP National Championship Game Agreement is to, among other things, set forth the terms and conditions whereby the national championship football game and the ancillary events associated with it, as set forth in the CFP National Championship Game Agreement, scheduled for the weekend leading into and through the date of January 7, 2019 (the "Game"), would be hosted at Levi's Stadium in Santa Clara California (the "Stadium").
- D. WHEREAS, Assignor's right to book Non-NFL Events at Levi's Stadium is governed by the terms of the Amended and Restated Stadium Lease Agreement by and between the Santa Clara Stadium Authority and Forty Niners SC Stadium Company LLC entered into as of June 19, 2013 ("Stadium Lease") and the Stadium Management Agreement by and among Santa Clara Stadium Authority and Forty Niners Stadium Management Co. LLC and Forty Niners SC Stadium Company LLC dated as of March 28, 2012 and as amended thereafter ("Management Agreement"); and
- E. WHEREAS, pursuant to Section 4.7.3 of the Stadium Lease the Stadium Authority is entitled to all Stadium Authority Event Revenue and obligated to pay all Stadium Authority Event Expenses; and
- F. WHEREAS, Assignor had informed Stadium Authority that Assignor anticipates net revenue will be negative from the Game; and

- G. WHEREAS, the purpose of this assignment is to provide a means by which Forty Niners Football Company LLC will fund and/or reimburse the Assignee for the net amount (if any) of all costs and expenses Assignee incurs as a result of (i) entering into the Venue Use Agreement and (ii) Assignee's acceptance of the Assignor's obligations and duties under the CFP National Championship Game Agreement, less all associated revenues and income realized by the Assignee in connection with the Game;
- H. WHEREAS, Stadium Manager has requested Stadium Authority's prior written consent to the assignment provided for herein;

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual covenants herein contained, the parties hereto hereby agree as follows:

1. As of the Effective Date, Assignor hereby grants, transfers, conveys and assigns to the Assignee all of its right, title and interest in and to the CFP National Championship Game Agreement, and the Assignee hereby assumes all of the Assignor's right, title and interest and obligations and liabilities with respect to and under the CFP National Championship Game Agreement subject to the provisions of this Agreement.

2. The parties hereto acknowledge and agree that upon the Effective Date, the Assignee hereby becomes a party to the CFP National Championship Game Agreement as the "Host Committee" in accordance with the provisions of Section 10.4 of the CFP National Championship Game Agreement and such agreement is hereby amended and supplemented accordingly.

3. The parties hereto contemplate that the Assignee will enter into Assignor's standard venue use agreement (with modifications consistent with this Assignment) with the Assignor, acting on behalf of the Santa Clara Stadium Authority, to allow the Game to be hosted at the Stadium (the "Venue Use Agreement").

4. The Stadium Authority hereby approves the Assignment Agreement subject to the following conditions:

a. The Venue Use Agreement shall provide that the Host Committee shall be responsible for (i) all costs and expenses in connection with the Game (as defined in this Assignment and Assumption Agreement), including Stadium Operations Expenses (as defined in the Venue Use Agreement) of all actual incurred public safety costs, up to double time pay if sixty (60) days prior to game day there are not sufficient Santa Clara employees supporting public safety activities that have volunteered to provide adequate public safety during the national championship game as determined by the Stadium Authority Executive Director and the Stadium Manager, and the actual cost of other services provided by Stadium Authority and City for the purpose of planning and preparing for this event, less (ii) all revenues and income associated with the Game, to which the Stadium Authority would otherwise have been entitled, provided that the provisions of b, below, shall apply to any positive Net Amount, as defined therein, and the Stadium Authority shall retain the right to the revenue set forth in d, below.

b. Following the Effective Date, the Assignor shall cause Forty Niners Football Company LLC to enter into an agreement in favor of the Assignee, whereby Forty Niners Football Company LLC ("Third Party Guarantor") shall agree to fund and/or reimburse the Assignee for the net amount (if negative) of all costs and expenses Assignee incurs as a result of (i) entering into the Venue Use Agreement and (ii) Assignee's acceptance of the Assignor's obligations and duties under the CFP National Championship Game Agreement, less all associated revenues and income realized by the Assignee in connection with the Game (the "Net Amount"). In the event that the Net Amount is a positive number, then Assignee shall pay the Net Amount to Assignor and such amount shall be treated as net revenue from a Non-NFL Event in the same manner as if the Assignment had not been made.

c. Assignee shall agree to pay City of Santa Clara all costs for public safety services of the City within 15 days of receipt of invoice at actual costs including but not limited to double-time rates incurred as provided in this Agreement. If such payment is not delivered to the Stadium Authority within such fifteen (15) days period, and such failure to pay results in additional costs assessed to Stadium Authority, then Assignee shall be liable to City for all such additional costs, including but not limited to, late penalties and interest.

d. Notwithstanding the provisions of b, above, the assignment of all Game revenue contemplated by this Agreement does not include an assignment of the \$4 Non-NFL Event Ticket Surcharge (as that term is defined in the Stadium Lease).

e. Assignee agrees to provide an accounting of the Game as follows: (1) Assignee shall provide to the Stadium Authority Executive Director an Initial Accounting to be completed by June 30, 2019 consisting of a profit and loss statement of the Game and possession of all hardcopy and softcopy supporting documentation and such additional information as may be necessary to confirm the information set forth in such profit and loss statement; (2) Assignee shall provide the Stadium Authority Executive Director with an annual audit of its financial statements by a recognized third-party accounting firm and it shall provide a copy of the audited financial statement for the fiscal years that include Stadium Authority related activity.

5. All notices and communications to be delivered to the Host Committee pursuant to Section 10.3(b) of the CFP National Championship Game Agreement, shall be directed to the Assignee at the address listed below:

Bay Area Host Committee
240 S. Market St., Suite 10
San Jose, CA 95113
Attention: Executive Director Patricia Ernstrom

6. THIS AGREEMENT AND THE RIGHTS, DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES HERETO SHALL BE GOVERNED IN ACCORDANCE WITH THE INTERNAL LAWS AND DECISIONS OF THE STATE OF CALIFORNIA (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES).

7. Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any California State court or federal court of

the United States of America sitting in Santa Clara County, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto, for itself and for its property, hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such California State court or, to the extent permitted by law, in such federal court. Each of the parties hereto agrees that it may be served with legal process by mail in addition to any other means permitted by applicable law and that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Nothing in this Agreement shall affect any right that either party may otherwise have to bring any action or proceeding relating to this Agreement in the courts of any jurisdiction.

8. Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement in any California State court or federal court of the United States of America sitting in Santa Clara County. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such action or proceeding in any such court.

9. This Agreement may be assigned only with consent of all parties hereto and shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.

10. No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and signed by the party against whom such waiver or modification is sought to be enforced and the parties hereto have provided any contractually notice of such waiver or modification.

11. Capitalized terms not defined herein shall have the meaning as set forth in the CFP National Championship Game Agreement.

12. For the purpose for facilitating the execution of this Agreement as herein provided and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute and be one and the same instrument. Delivery of executed signature pages by facsimile transmission or by scanned pages sent by electronic mail shall constitute effective and binding execution and delivery thereof.

13. The parties agree to execute, acknowledge and deliver such further instruments and documents as may be reasonably requested by any party to carry out the intent of this Agreement.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

ASSIGNEE:

BAY AREA HOST COMMITTEE
a California nonprofit mutual benefit corporation

DocuSigned by:
By: Scott Sabatino
Name: Scott Sabatino
Title: Treasurer

ASSIGNOR:

FORTY NINERS STADIUM MANAGEMENT
COMPANY, LLC
a Delaware limited liability company

DocuSigned by:
By: Jim Mercurio
Name: CC8F2EFA5F32465...
Title: VP, stadium operations and General Manager

CONSENTED TO AND
ACCEPTED BY:

CFP

DocuSigned by:
By: Andrea Williams
Name: Andrea Williams
Title: CFP Executive Director
Date: 10/5/2018

APPROVAL OF CONDITIONAL ASSIGNMENT:

Santa Clara Stadium Authority

DocuSigned by:
By: Deana J. Adams
Name: Deana J. Adams
Title: Executive Director
Date: 10/5/2018